IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 14768 of 2007

DATE OF DECISION: 20.9.2007

M/s Gupta Carpet Udyog Limited

…Petitioner

Versus

Customs Excise and Service Tax Appellate Tribunal, Mumbai and another

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

**HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present: Mr. Akshay Bhan, Advocate,
for the petitioner.

**M.M. KUMAR, J.**

This petition filed under Article 226 of the Constitution prays for quashing order dated 16.7.2007 (P-2), passed by the Customs Excise and Service Tax Appellate Tribunal, Mumbai (for brevity, 'the Tribunal), declining the prayer of the petitioner for waiving the condition of pre-deposit of duty as imposed by the Commissioner, vide order dated 18.12.2006. The application of the petitioner has been dismissed by the Tribunal by recording categorical findings that re-warehousing certificates produced by the

exporting units were discarded because they did not relate with the material which was used in the export product and goods were never used for the intended purpose. It has further been observed that the re-warehousing certificates were forged and the same were obtained by mis-representation of facts. Referring to the statements of Sarvshri Sunil Gupta, Managing Director, Sandeep Agarwal, Director, S.K. Agarwal, General Manager, U.C. Verma, Commercial Officer of the petitioner the Tribunal has arrived at a conclusion that they were fully aware that the goods were not be utilized by the petitioner and the suppliers were party to the domestic sale; and that duty evaded was jointly shared between the supplying units, the petitioner and brokers. It has been specifically held that Shri Arun Gupta was arranging transportation, payment and domestic sale of the yarn in consultation with the managements of the supplying units, delivery orders for delivery to local buyers were being issued by some of the suppliers themselves. The Tribunal in these circumstances has ordered the petitioner to pre-deposit Rs. 1 crore within 8 weeks from the date of receipt of order and on such deposit there was to be waiver of pre-deposit of balance amount and recovery thereof till disposal of the appeal.

After hearing learned counsel for the petitioner and perusing the record we are of the considered view that the petitioner does not deserve any equitable relief under Article 226 of the Constitution. There are categorical findings which would not meet the requirements of a prima facie case and irreparable loss. The petition is wholly without merit and the same is accordingly

dismissed. However, it is made clear that any observation made in this order shall not be considered as an expression of opinion on merit of the controversy by the appellate authority. These have been first blush impressions which may or may not be found to be correct after thorough probe by the Appellate Authority.

**(M.M. KUMAR)**
**JUDGE**

**(AJAY KUMAR MITTAL)**
**JUDGE**

**September 20, 2007**
Pkapoor